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FISCAL IMPACT STATEMENT

LS 7549

BILL NUMBER: HB 1628

NOTE PREPARED: Jan 19, 2009

BILL AMENDED:

SUBJECT: Probate Succession.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State and Local

Summary of Legislation: The bill provides that property interests transferred to a surviving domestic partner upon the other domestic partner's death are exempt from the Inheritance Tax. It enables domestic partners to own property as tenants by the entireties. It specifies that certain personal property becomes the sole property of a surviving domestic partner upon the death of the other domestic partner. It also provides that a surviving domestic partner is entitled to the same status as a surviving spouse under the probate code.

Effective Date: July 1, 2009.

Summary of NET State Impact: The bill could potentially decrease revenue in the state General Fund by roughly \$5.0 M in FY 2011, and about \$5.03 M annually beginning in FY 2012.

Explanation of State Expenditures: *County Inheritance Tax Replacement:* The exemption change for transfers to domestic partners could potentially increase expenditures from the state General Fund for county Inheritance Tax replacement by approximately \$25,000 annually beginning in FY 2012. The replacement payments may be higher to the extent that domestic partnerships tend to be concentrated in one or a few counties and, as a result, the county Inheritance Tax loss is concentrated only in a few counties. (Note: Replacement payments are made in the fiscal year following the fiscal year in which counties experience revenue shortages.) Necessary replacement funding may vary depending on whether, and by how much, each county's base revenue differs from the amount guaranteed under current statute. (See *Explanation of Local Revenues*, below, for an explanation of county revenue loss and replacement procedures.)

Department of State Revenue (DOR): The DOR will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the change in the Inheritance Tax exemption for domestic

partners. The DOR also will have to determine whether domestic partners and domestic partnerships meet the requirements of the bill for purposes of exempting transfers from the Inheritance Tax. The DOR's current level of resources should be sufficient to implement these changes. The January 5, 2009, state staffing report indicates that the Inheritance Tax section of the DOR has seven full-time employees and one vacant full-time position.

Explanation of State Revenues: Summary - The bill could potentially decrease Inheritance Tax revenue by \$5.0 M annually beginning in FY 2011.

Background Information - The bill would change the Inheritance Tax exemption relating to transfers from a decedent to his or her domestic partner. Current statute provides that a domestic partner of a decedent is a Class C beneficiary entitled to a \$100 exemption on transfers from the decedent. Under the bill, transfers from a decedent to his or her domestic partner would be fully exempt from the Inheritance Tax (the same as a surviving spouse). The Inheritance Tax must be paid within 12 months after the decedent's death (within 9 months to receive the 5% early payment discount). The initial fiscal impact of increasing the exemption would occur in FY 2011. Since the exemption would apply to transfers of decedents who die after June 30, 2009, the fiscal impact would begin in FY 2011. Revenue from the Inheritance Tax is distributed to the state General Fund.

The bill defines a domestic partnership as a relationship that meets the following criteria:

- (1) The relationship exists between two individuals: (a) who are each at least 18 years of age; (b) who are not related to each other by blood or marriage within four degrees of consanguinity under civil law; and (c) neither of whom is married to, or in a civil union or domestic partnership with a third individual.
- (2) The relationship is, by agreement of the individuals, a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship.

The revenue loss estimate is based on the ratio of married couple households to unmarried-partner households in Indiana according to estimates by the U.S. Census Bureau. This ratio is about 9 to 1, thus, domestic partnerships are assumed to represent 11% to 12% of the number of married couples in the population. The ratio is used to estimate the annual number of transfers to domestic partners based on the number of transfers made annually to surviving spouses. The annual average surviving spouse transfers in recent years is about 1,025. This suggests that transfers to domestic partners could potentially average about 120 per year. The median value of transfers to surviving spouses in recent years totals about \$335,000. This is assumed to also be the typical transfer value for surviving domestic partners. Also, 92% of the gross tax liability is remitted to the state and distributed to the state General Fund.

Explanation of Local Expenditures: Probate Courts: The probate courts will have to make determinations as to domestic partnerships meeting the criteria in the bill for purposes of estate administration and the Inheritance Tax. The extent to which these tasks will increase costs to the probate courts is indeterminable.

Explanation of Local Revenues: Summary - The change in the exemption for transfers to domestic partners could potentially lead to a net reduction in Inheritance Tax to counties of about \$450,000 in SFY 2011 and \$425,000 annually beginning in SFY 2012.

Background Information - Counties retain 8% of the Inheritance Tax collected on transfers made by Indiana residents, and are guaranteed a statutorily determined amount from the Inheritance Tax under P.L.254-1997. This legislation increased the Class A exemption to \$100,000 effective July 1, 1997, and required the state to annually transfer money from the state General Fund to counties to replace county Inheritance Tax revenue lost due to the exemption increase. The replacement provision guarantees that each county receive an amount of Inheritance Tax revenue equal to the five-year annual average amount of Inheritance Tax received by that county from FY 1991 to FY 1997, excluding the highest year and lowest year. The total annual guarantee to counties is approximately \$7.4 M, with replacement payments averaging about \$208,000 since FY 2000. (Note: Replacement payments are made in the fiscal year following the fiscal year in which counties experience revenue shortages.)

The exemption change is estimated to reduce Inheritance Tax revenue to the counties by about \$450,000 per year beginning in FY 2011. However, the revenue loss is also estimated to trigger Inheritance Tax replacement payments from the state totaling about \$25,000 annually beginning in FY 2012.

State Agencies Affected: DOR.

Local Agencies Affected: Probate courts; Counties.

Information Sources: OFMA Inheritance Tax database, 2002-2006 decedents. U. S. Census Bureau, *2005-2007 American Community Survey 3-Year Estimates*, B11001: Household Type (Including Living Alone) & B11009: Unmarried-Partner Households by Sex of Partner.

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